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Supreme Court of the United States

PARENTS INVOLVED IN COMMUNITY SCHOOLS,

Petitioner,

v.

SEATTLE SCHOOL DISTRICT NO. 1, *et al.*,

Respondents.

CRYSTAL D. MEREDITH, Custodial Parent and Next Friend of JOSHUA RYAN McDONALD,

Petitioner,

v.

JEFFERSON COUNTY BOARD OF EDUCATION, *et al.*,

Respondents.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH AND SIXTH CIRCUITS

BRIEF OF *AMICI CURIAE* HOUSING SCHOLARS AND RESEARCH & ADVOCACY ORGANIZATIONS IN SUPPORT OF RESPONDENTS

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES iii

INTEREST OF *AMICI CURIAE* 1

SUMMARY OF ARGUMENT 2

ARGUMENT 4

I. SCHOOL DISTRICTS HAVE A COMPELLING INTEREST IN EMPLOYING RACE-CONSCIOUS INTEGRATION PROGRAMS BECAUSE - ABSENT SUCH PROGRAMS - SCHOOL INTEGRATION CANNOT OCCUR SO LONG AS RESIDENTIAL SEGREGATION PERSISTS. 8

A. Fair housing and the promotion of integration are national policy. 10

B. Historical practices by state and private actors have skewed the housing market to create significant residential segregation, hindering the emergence of integrated schools 12

1. Development of the American suburb 12

2. Urban renewal and public housing 13

3. Low Income Housing Tax Credit and other government practices 15

C. School integration is unlikely to occur naturally because of private discriminatory practices that continue to skew the housing market. 18

1. Steering and other forms of housing discrimination. 18

2. Mortgage lending and insurance discrimination. 21

TABLE OF CONTENTS – continued

D. Americans are increasingly willing to live in integrated communities. 24

II. THE POSITIVE IMPACT OF SCHOOL INTEGRATION POLICIES ON RESIDENTIAL INTEGRATION UNDERSCORES THE DISTRICTS' COMPELLING INTEREST IN COMBATING SCHOOL SEGREGATION. 26

CONCLUSION 30

APPENDIX 1a

TABLE OF AUTHORITIES

CASES — Page

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Page

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INTEREST OF *AMICI CURIAE*

Amici include research and advocacy organizations, law professors, sociologists, historians and other scholars[1] who have devoted significant time and attention to studying the causes and harms of residential segregation.[2] They are united in their belief that school districts should be allowed to implement voluntary school desegregation programs given the history and persistence of residential segregation in the United States.

The organizational *amici* include: the **Poverty & Race Research Action Council**, a nonprofit civil rights policy organization that supports research and advocacy to address the mechanisms of structural inequality in our society; the **Institute on Race & Poverty** at the University of Minnesota, a research and advocacy organization dedicated to improving access to opportunity and maintaining regional stability through investigation of policies and practices that disproportionately affect people of color and the disadvantaged; the **National Fair Housing Alliance**, an organization dedicated to eliminating housing discrimination and ensuring equal housing opportunity for all people; the **National Low Income Housing Coalition**, an advocacy and research organization dedicated to ending America's affordable housing crisis; the **National Housing Law Project**, a law and advocacy center that works to advance the housing rights of the poor; the **Gamaliel Foundation**, an organizing network of 60 affiliates that represents more than a million multi-faith, multi-racial church-going people who work on social justice campaigns;

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[1] The parties' blanket letters of consent to the filing of all *amicus* briefs have been filed with the Clerk of this Court. None of the parties authored this brief in whole or in part and no person other than *amici* or counsel contributed money or services to the preparation and submission of this brief.

[2] Non-organizational *amici*, listed in the Appendix, sign this brief in their individual capacities. Academic affiliations are provided for identification purposes only.

the **Center for Cities and Schools** at the University of California, Berkeley, a research organization committed to bridging the fields of education and urban policy to create equitable, diverse, and livable cities and schools; the **Inclusive Communities Project**, a Dallas-based not-for-profit organization that works for the creation and maintenance of thriving racially and economically inclusive communities; the **Kentucky Commission on Human Rights**, an anti-discrimination enforcement and research organization that was formed in 1960 to enforce the Kentucky Civil Rights Act; and the **Metropolitan Housing Coalition**, a Louisville-based non-profit organization representing over 170 member organizations and more than 250 individual members that advocates for sound affordable housing policies in Louisville and nationwide.

SUMMARY OF ARGUMENT

Since at least the 1970s, this Court has recognized the reciprocal relationship between residential integration and school integration. Subsequent social science has confirmed this connection. Given the vital importance of meaningful racial integration for our democratic society, it is necessary to consider the links between schools and housing to assess fully a school district's compelling interest in promoting school integration. Such an examination reveals that housing markets distorted by private discrimination and government policy are incapable of creating residential integration that would make school integration measures unnecessary, and that school integration promotes residential integration, benefiting all Americans.

Contrary to the assertion of Petitioner Parents Involved in Community Schools, today's housing patterns are not simply products of private, free choice. Segregated residential patterns result from an array of policies and actions by public and private actors. Beginning with historical state-sponsored discrimination, such as *de jure* racial segregation in public housing, discriminatory public housing site selection and tenant assignment policies, and

purposeful exclusion of African-Americans from federal mortgage lending programs, government at all levels has indelibly formed the landscape of America's metropolitan areas.

In addition, discriminatory practices, both public and private, continue to mar the housing market. Real estate agents, for example, frequently steer people to different neighborhoods based on their race. Mortgage lending and insurance redlining contribute to residential segregation because lenders and insurers offer different terms and policies to minority homebuyers and deny their applications at disproportionately high rates. Quite simply, today's residential patterns are not the product of unfettered choice.

As a result, schools will not become integrated without affirmative steps by school districts to promote integration. Indeed, for school districts to do nothing when faced with today's levels of residential segregation is effectively to choose school segregation.

School districts also have a compelling interest in undertaking voluntary efforts to integrate their schools due to the strong, positive impact school integration has on residential integration in both the short and long term. Social science research demonstrates that school districts that employ robust desegregation programs also enjoy *stable* residential integration. An integrated school system opens entire districts to parents who might otherwise choose to live in a neighborhood based largely on the racial composition of the schools their children will attend. In addition, graduates of integrated schools are more likely to live in integrated neighborhoods.

The interest of school districts like Seattle's and Louisville's (the "Districts") in ensuring that their public schools remain integrated can only be understood with reference to the substantial barriers to residential integration. At a time when Americans are more willing than ever before to share their neighborhoods, school districts have a

compelling interest in guaranteeing that students of all racial and ethnic backgrounds can share classrooms as well.

ARGUMENT

The compelling interests identified by the Districts in support of their school desegregation programs appear even more compelling in light of the relationship between integrated schools and integrated housing. More than thirty years ago, this Court described the "profound reciprocal effect" of student assignment plans on the racial composition of residential neighborhoods within a metropolitan area. *Keyes v. Sch. Dist. No. 1*, 413 U.S. 189, 202 (1973).

Understanding the relationship between housing and schools is particularly important in the context of continuing residential segregation patterns within the United States. According to the 2000 Census, the American population was 69.1% White, 12.5% Latino, 12.1% African-American, 3.6% Asian, 0.7% American Indian or Alaska Native, and 1.9% other or two or more races. Elizabeth M. Grieco & Rachel C. Cassidy, U.S. Census Bureau, *Overview of Race and Hispanic Origin: Census 2000 Brief* 10 (2001). However, "[t]he average white person in metropolitan America lives in a neighborhood that is 80% white and only 7% black." John Logan, Lewis Mumford Ctr. for Comparative Urb. & Reg'l Res., *Ethnic Diversity Grows, Neighborhood Integration Lags Behind* 1 (2001). In stark contrast, "[a] typical black individual lives in a neighborhood that is only 33% white and as much as 51% black," *id.*, making African-Americans the most residentially segregated group in the United States, John Iceland et al., U.S. Census Bureau, *Racial and Ethnic Residential Segregation in the United States: 1980-2000*, at 95 (2002). For the African-American population of each neighborhood to equal the African-American population of its metropolitan area, 64% of African-Americans would need to move – a decrease of only 4% since 1990. *Id.* at 8, 60. Segregation actually increased or remained the same for lower-socioeconomic status African-Americans between 1990 and 2000. John Iceland et al., U.S. Census Bureau, *Class*

Differences in African American Residential Patterns in U.S. Metropolitan Areas: 1990-2000, at 8, 16 (2003).

Levels of school segregation are even more severe for low income African-Americans. In 2002-2003, only 28% of all White public school students (K-12) attended high-poverty schools (defined as schools where 40% or more of the students were eligible for free and reduced lunches). *See* Gary Orfield & Chungmei Lee, Civil Rights Project, *Why Segregation Matters: Poverty and Educational Inequality* 19 tbl.7 (2005). In contrast, 71% of all Black public school students and 73% of all Latino public school students attended high-poverty schools during the same period. *See id.*

Segregation remains significantly correlated with race, not simply socioeconomic status. For Blacks and Latinos, relatively high incomes are no protection against segregation: "Disparities between neighborhoods for blacks and Hispanics with incomes above $60,000 are almost as large as the overall disparities, and they increased more substantially in the [1990s]." John R. Logan, Lewis Mumford Ctr. for Comparative Urb. & Reg'l Res., *Separate and Unequal: The Neighborhood Gap for Blacks and Hispanics in Metropolitan America* 2 (2001). Plainly, significant barriers to integration remain.

At the same time, the United States is rapidly becoming more racially and ethnically diverse than ever before. The group among whom this shift is most evident is children, as America's youth are more racially and ethnically diverse than its adult population. William H. Frey, Brookings Inst., *Diversity Spreads Out: Metropolitan Shifts in Hispanic, Asian and Black Populations Since 2000*, at 1 (2006). This shift is particularly apparent "[i]n nearly one-third of the nation's largest metropolitan areas, [where] at least half of all people under age 15 are racial and ethnic minorities." *Id.* at 17. In combination with growing "exurban" communities at the periphery of metropolitan areas caused by mainly White migration, *id.* at 13-14, the profile of metropolitan areas is changing rapidly.

The racial housing patterns of both Seattle and Louisville reflect these trends. As noted by the Ninth Circuit, the "[Seattle School] District 'established that housing patterns in Seattle continue to be racially concentrated,' and would result in racially concentrated or isolated schools if school assignments were based solely on a student's neighborhood or proximity to a particular high school." *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 426 F.3d 1162, 1177 (9th Cir. 2005) (en banc). Like much of the United States, Seattle has an ugly history of racial exclusion and discrimination in its housing market. Through the use of restrictive covenants and other discriminatory tactics, 69% of African-Americans occupied just ten census tracts within single Seattle neighborhood by 1950. Kate Davis, Housing Segregation in Seattle 12 (2005) (unpublished M.P.A. thesis, University of Washington) (on file with counsel). The concentration of African-Americans increased over the next decade, with 78% of African-Americans in the same area by 1960. *Id.* In 1964, a fair housing ballot initiative was defeated by a 2 to 1 margin. *Id.* at 14. In more recent years, Seattle has become more integrated overall, but the continuing effects of these historical patterns exert a powerful effect, with residential segregation particularly pronounced in the city's southeastern neighborhoods. *See id.* at 24, 33.

Louisville also has a long history of racial discrimination and residential segregation. This Court first confronted residential segregation in Louisville when it struck down a zoning ordinance forbidding the sale of property to African-Americans on majority White blocks. *See Buchanan v. Warley*, 245 U.S. 60, 81-82 (1917). Several decades later, Louisville's African-American community rapidly concentrated. While just 28% of the African-American population lived in 30 of Jefferson County's 149 census tracts in 1960, 82% lived in those same 30 tracts by 1970. Comm'n on Human Rights, Commonwealth of Ky., *More Housing Segregation Than Ever . . . In Louisville and Jefferson County* 4 (1973). In addition, the

number of census tracts that were more than 90% African-American ballooned from six to 15 in the 1960s. *Id.* This increased segregation is attributable to a number of forces, including the county housing authority's failure to follow through on affordable housing proposals outside Louisville, and private discriminatory acts such as racial steering and the refusal to sell homes to African-Americans in suburban areas. *Id.* at 7-10. Residential segregation is still a serious concern in Louisville today, as African-Americans constitute less than 19% of the metropolitan area's population, but more than 50% of the population in five council districts and less than 5% in five other districts. Metro. Hous. Coal., *State of Metropolitan Housing Report* 9 (2005). Moreover, African-American children in metropolitan Louisville are twice as likely as other children to live in poverty. *Id.*

Given the reciprocal effect of housing patterns on school composition, the Districts' interests in reducing school segregation are compelling for two independent reasons. *First*, school segregation is practically inseparable from the many causes of housing segregation, as recognized in *Keyes*. And, it is clear that even decades after the eradication of Jim Crow laws, residential segregation persists and is not simply the product of private free choice. Rather, the historical and contemporary practices of state and private actors, such as racial steering and mortgage lending discrimination, directly contribute to the persistent segregation of America's neighborhoods. When a school district acquiesces to segregated residential patterns in drawing school attendance zones and setting student assignment policies it is in a very real sense affirmatively *choosing* segregation. *Second*, extensive social science research demonstrates that school integration programs support housing integration in both the short and long term. Parents are less likely to move when integration programs help to ensure racially integrated schools, and students who attend racially integrated schools are more likely to live in integrated neighborhoods as adults.

I. SCHOOL DISTRICTS HAVE A COMPELLING INTEREST IN EMPLOYING RACE-CONSCIOUS INTEGRATION PROGRAMS BECAUSE - ABSENT SUCH PROGRAMS - SCHOOL INTEGRATION CANNOT OCCUR SO LONG AS RESIDENTIAL SEGREGATION PERSISTS.

Because of the undeniable link between school integration and housing integration, school officials who combat racial segregation in their schools actually address two compelling interests: defeating school segregation and promoting residential integration.

As this Court recognized long ago, school districts are constitutionally permitted to recognize school segregation as an educational problem and take steps to remedy it. *See Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 16 (1971) ("School authorities are traditionally charged with broad power to formulate and implement educational policy and might well conclude . . . that in order to prepare students to live in a pluralistic society each school should have a prescribed ratio of Negro to white students reflecting the proportion for the district as a whole."); *see also N.C. Bd. of Educ. v. Swann*, 402 U.S. 43, 45, 46 (1971) (striking down a state statute that "flatly prohibit[ed] assignment of any student on account of race or for the purpose of creating a racial balance or ratio in the schools" because it would "render illusory the promise of *Brown v. Board of Education*, 347 U.S. 483 (1954)").

This Court best explained the strong connection between school and residential segregation in *Keyes*:

> [I]t is obvious that a practice of concentrating Negroes in certain schools by structuring attendance zones or designated "feeder" schools on the basis of race has the reciprocal effect of keeping other nearby schools predominantly white. Similarly, the practice of building a school . . . to a certain size and in a certain location, "with conscious knowledge that it would be a segregated school," has a substantial

> reciprocal effect on the racial composition of nearby schools. So also the use of mobile classrooms, the drafting of student transfer policies, the transportation of students, and the assignment of faculty and staff, on racially identifiable bases, have the clear effect of earmarking schools according to their racial composition, and this, in turn, *together with the elements of student assignment and school construction, may have a profound reciprocal effect on the racial composition of residential neighborhoods within a metropolitan area, thereby causing further racial concentration within the schools.*

400 U.S. at 201-02 (emphasis added). As *Keyes* explains, racial segregation patterns in schools cannot be understood without reference to racial residential patterns. For a school district to take no action in response to coextensive school segregation and residential segregation would be to acquiesce to both – contrary to strong national policies regarding school desegregation, fair housing, and residential integration.

While Petitioner Parents Involved in Community Schools suggests that the locations of families' homes are purely "voluntary choices," and that residential segregation is a result of "many families choos[ing] to live near people of similar racial and ethnic heritage," Pet'rs Br. 38, that claim ignores the role of government policy and private discrimination, and also grossly oversimplifies the process by which a family selects a home. Three decades after *Milliken v. Bradley*, 418 U.S. 717 (1974), we have learned a great deal about the mechanisms of metropolitan housing segregation. No longer, as Justice Stewart noted in discussing the evidentiary record in Detroit, are the factors affecting housing segregation "unknown and perhaps unknowable," *id.* at 756 n.2 (Stewart, J., concurring). Both Whites and people of color, particularly African-Americans, face a housing market that is highly distorted.

America's extensive history of state-sponsored discrimination has set the stage for the rampant housing discrimination that helps to perpetuate residential segregation. Even today, minorities of all income levels are highly likely to suffer housing discrimination, particularly in the form of racial or ethnic "steering," an illegal practice which has actually increased since 1989.

Within this context, the racial composition of schools results from much more than the technical drawing of student attendance zone boundaries, and meaningful integration is unlikely to occur without the efforts of school districts like those of Seattle and Louisville. Critically, those efforts accord with the Fair Housing Act's dual purposes of promoting integration and prohibiting discrimination.

A. Fair housing and the promotion of integration are national policy.

Congress recognized the importance of both residential integration and the elimination of housing discrimination in the Fair Housing Act of 1968 (the "Act"), which established that "[i]t is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States." 42 U.S.C. § 3601.[3] As Senator Javits described the Act, it was intended to promote integration, thereby benefiting not just minorities, but "the whole community." 114 Cong. Rec. 2706 (1968). In addition, as this Court has noted, Senator Mondale explained that a purpose of the Act is to replace ghettos "by truly integrated and balanced living patterns." *Trafficante v. Met. Life Ins. Co.*, 409 U.S. 205, 211 (1972) (citing 114 Cong. Rec. 3422 (1968)). This

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[3] Congress passed the Act shortly after the release of the Report of the National Advisory Commission on Civil Disorders (commonly known as the Kerner Commission Report), which found that "most Negro families have remained within predominantly Negro neighborhoods, primarily because they have been effectively excluded from white residential areas," and "pointed out the connection between racial segregation in housing and in schools." Robert G. Schwemm, *Housing Discrimination Law and Litigation* § 5:2 (2006).

Court has also recognized that, through the Act, Congress made "a strong national commitment to promote integrated housing." *Linmark Assocs., Inc. v. Twp. of Willingboro*, 431 U.S. 85, 95 (1977).

The compelling national interest in residential integration expressed by Congress in both the text and legislative history of section 3601 of the Act is reinforced by the express provisions of the Act that require HUD, all agencies of the federal government, and, by extension, their state and local grantees, to carry out their housing-related programs "in a manner affirmatively to further" purposes and policies of the Act, *i.e.*, fair housing and integration. *See* 42 U.S.C. § 3608(d), (e)(5); Exec. Order No. 12,892, 59 Fed. Reg. 2939 (Jan. 14, 1994). Because the 1964 Civil Rights Act's prohibition on discrimination in public housing had been unsuccessful in creating residential integration, Congress adopted section 3608 to force the federal government to work more aggressively to end segregation. Schwemm, *supra*, at § 21:1. As Senator Brooke explained, "[t]oday's Federal housing official commonly inveighs against the evils of ghetto life even as he pushes buttons that ratify their triumph." *Id.* (quoting 114 Cong. Rec. 2281 (1968)). As a result, Congress realized that giving HUD the freedom to make decisions with the caveat that they not be discriminatory was insufficient, and instead imposed upon HUD and other federal agencies an affirmative duty to make decisions that further integration. *Id.*

Section 3608 creates presumptions against locating housing projects in segregated neighborhoods, *see, e.g.*, *Shannon v. HUD*, 436 F.2d 809 (3d Cir. 1970), and providing financial support for local housing authorities that practice segregation, *e.g.*, *Gautreaux v. Romney*, 448 F.2d 731 (7th Cir. 1971). Further, HUD is not allowed to make housing selection decisions unless it considers the impact of the project on the area's racial concentration. *Shannon*, 436 F.2d at 821. A key part of that analysis is consideration of the racial composition of local schools. *Id.* at 822. In addition,

HUD's lack of aggressiveness in influencing local governments to promote fair housing is remediable under § 3608. *E.g., NAACP v. HUD*, 817 F.2d 149, 155 (1st Cir. 1987) (Breyer, J.) (explaining that the Act's broad goal "suggests an intent that HUD do more than simply not discriminate itself; it reflects the desire to have HUD use its grant programs to assist in ending discrimination and segregation, to the point where the supply of genuinely open housing increases").

This clear national mandate for the promotion of fair housing and residential integration provides a compelling interest in support of school integration policies.

B. Historical practices by state and private actors have skewed the housing market to create significant residential segregation, hindering the emergence of integrated schools.

Today's highly racially segregated residential patterns were not always in place. Before 1900, nothing resembling the modern racially identifiable ghetto existed in northern cities. Douglas S. Massey & Nancy A. Denton, *American Apartheid: Segregation and the Making of the Underclass* 20 (1993). Legally enforced segregation outside of the South was a product of the twentieth century and gradually developed as a result of "violence, collective antiblack action, racially restrictive covenants, and discriminatory real estate practices." *Id.* at 42. In addition, state action that systematically limited development of minority neighborhoods and excluded minorities from White neighborhoods promoted the creation of the racially isolated American ghetto.

1. Development of the American suburb.

Historians have long recognized that the federal government transformed the American housing market by making it accessible to people outside the upper middle and upper classes – but Whites only – through the Federal Housing Administration's ("FHA") mortgage insurance

programs. *See* Kenneth T. Jackson, *Crabgrass Frontier* 190-218 (1985); Ira Katznelson, *When Affirmative Action Was White* 115-41 (2005). The FHA, in combination with New Deal-era selective credit programs, had a huge impact on the American housing market, functioning to insure private lenders against loss, standardize appraisal practices, and popularize the use of long-term, amortized mortgages. *See* Jackson, *supra*, at 204; David M.P. Freund, *Marketing the Free Market: State Intervention and the Politics of Prosperity in Metropolitan America, in The New Suburban History* 11, 16 (Kevin M. Kruse & Thomas J. Sugrue eds., 2006). Unfortunately, these programs were also explicitly discriminatory, as they denied benefits in accordance with race-based rules. *See* Jackson, *supra*, at 207-09. Many of those rules were memorialized in the FHA's Underwriting Manual, which described the "risks posed by the commingling of 'inharmonious racial groups.'" Arnold R. Hirsch, *"Containment" on the Home Front: Race and Federal Housing Policy from the New Deal to the Cold War*, 26 J. Urb. Hist. 158, 162 (2000).

In addition, African-Americans were systematically excluded from GI Bill loan programs, administered through the Veterans Administration ("VA"), that insured mortgages for five million homes throughout the United States because banks refused to approve loans to African-Americans. Katznelson, *supra*, at 115, 139-40. Both the VA and FHA "endorsed the use of race-restrictive covenants until 1950," and refused to underwrite loans that would "introduc[e] 'incompatible' racial groups into white residential enclaves." Freund, *supra*, at 16. Financing almost half of all suburban homes in the 1950s and 1960s, the FHA and VA facilitated the development of the American suburb through racially discriminatory programs. Jackson, *supra*, at 215.

2. Urban renewal and public housing.

The federal government also actively promoted segregation through its design of interstate highways that physically separated minority and White communities,

elimination of "blighted" largely African-American communities, and facilitation of White flight to new suburban areas. *See* Sheryll Cashin, *The Failures of Integration: How Race and Class Are Undermining the American Dream* 103 (2004); Raymond A. Mohl, *Planned Destruction: The Interstates and Central City Housing, in From Tenements to the Taylor Homes: In Search of an Urban Housing Policy in Twentieth-Century America* 226, 226-45 (John F. Bauman et al. eds., 2000). In addition, federally subsidized urban renewal programs destroyed housing and forced mainly Black residents to search for homes in central cities and public housing projects that were located in racially isolated and poor areas. *See* Cashin, *supra*, at 103; Massey & Denton, *supra*, at 56.

Public housing has also contributed in no small part to the entrenchment of concentrated poverty and residential segregation throughout the country. Many cities established separate public housing for African-American and White residents. *See, e.g., NAACP v. HUD*, 817 F.2d 149 (1st Cir. 1987) (Boston); *Thompson v. HUD*, 348 F. Supp. 2d 398, 406 (D. Md. 2005) (Baltimore); *Walker v. HUD*, 734 F. Supp. 1289, 1294, 1296 (N.D. Tex. 1989) (Dallas); *Gautreaux v. Chi. Hous. Auth.*, 296 F. Supp. 907, 909 (N.D. Ill. 1969) (Chicago). The 1950s through the 1970s saw the development of large, densely populated "projects," often consisting of high-rise buildings located in poor, segregated communities. Rod Solomon, Brookings Inst., *Public Housing Reform and Voucher Success: Progress and Challenges* 2 (2005). Housing authorities often yielded to political pressure to keep public housing projects out of White neighborhoods. *See Walker*, 734 F. Supp. at 1294; *Gautreaux*, 296 F. Supp. at 913-14. As housing projects were erected, the demographics of cities and public housing changed, with the result of fewer Whites and more African-Americans living in public housing. *See, e.g., Thompson*, 348 F. Supp. 2d at 406; *Walker*, 734 F. Supp. at 1296; *Gautreaux*, 296 F. Supp. at 909. The high proportions of African-Americans in public housing, and the persistence of

residential segregation in other neighborhoods, have perpetuated segregation in public housing.

Without question, the federal government and individual housing authorities played an active and deliberate role in concentrating poverty in the racially segregated public housing they created. For example, the "primary purpose of [Dallas's] public housing program was to prevent blacks from moving into white areas of th[e] city," and the city deliberately took actions to create and maintain segregation through its public housing. *Walker*, 734 F. Supp. at 1293. Chicago public housing officials admitted to a policy of racial segregation in Chicago housing projects. *Gautreaux*, 296 F. Supp. at 909. HUD, too, has admitted to constructing public housing in already segregated neighborhoods, and to being "part of the problem" and "complicit in creating isolated, segregated, large-scale public housing." *Thompson*, 348 F. Supp. 2d at 467. The effects of those policies are apparent today, as the majority of African-American public housing residents live in segregated projects in poor, racially isolated neighborhoods. *See* John Goering et al., *Recent Research on Racial Segregation and Poverty Concentration in Public Housing in the United States*, 32 Urb. Aff. Rev. 723, 736 (1997).

3. Low Income Housing Tax Credit and other government practices.

Government programs today continue to contribute to the residential concentration of poor people of color, albeit without the explicitly discriminatory design of earlier programs. The implementation of the Low Income Housing Tax Credit program ("LIHTC"), 26 U.S.C. § 42, is one key example. The LIHTC has been the "principal mechanism for supporting the production of new and rehabilitated rental housing for low-income households" since it began in 1987. Carissa Climaco et al., Abt Assocs., *Updating the Low-Income Housing Tax Credit (LIHTC) Database Projects Placed in Service Through 2003*, at 2 (2006). It provides federal tax credits to investors who acquire, rehabilitate, or construct affordable

rental property targeted to low-income tenants. *Id.* at 1. Since 1999, the LIHTC has supported the development of 100,000 units per year. *Id.* at ii. Although adopted with the laudable goal of creating more affordable housing, the LIHTC has contributed to the concentration of low-income households in poor and racially isolated neighborhoods in America's central cities. *See* Myron Orfield, *Racial Integration and Community Revitalization: Applying the Fair Housing Act to the Low Income Housing Tax Credit*, 58 Vand. L. Rev. 1747, 1781 (2005). A recent report found that "very few states are placing more than half their [metropolitan area] LIHTC family units . . . in census tracts with lower minority population rates than the metropolitan area average." Jill Khadduri et al., Abt Assocs., *Are States Using the Low Income Housing Tax Credit to Enable Families with Children to Live in Low Poverty and Racially Integrated Neighborhoods?* 17 (2006). In both the Seattle and Louisville metropolitan areas, with minority population shares of approximately 24% and 18%, respectively, more than 68% of LIHTC family units were located in census tracts with greater than average minority population shares between 1995 and 2003. *See id.* at 41, 43. Accordingly, the LIHTC is not being implemented with the goal "to affirmatively further" fair housing, as the Fair Housing Act mandates. *See* Florence Roisman, *Mandates Unsatisfied: The Low Income Housing Tax Credit and the Civil Rights Laws*, 52 U. Miami L. Rev. 1011 (1998).

In addition, the Section 8 tenant-based assistance program – with more than 1.4 million vouchers nationwide[4] – perpetuates segregation through its support of housing in racially identifiable, high poverty neighborhoods. Neighborhoods with affordable housing but disproportionately low numbers of Section 8 participants are disproportionately White and more often located in the

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[4] Deborah J. Devine et al., U.S. Dep't of Hous. & Urban Dev., *Housing Choice Voucher Location Patterns: Implications for Participants and Neighborhood Welfare* 90, 120 n.65 (2003).

suburbs, while neighborhoods with proportionate or disproportionately high numbers of Section 8 participants are disproportionately African-American and have higher poverty levels. Devine et al., *supra*, at 13-14, 65.

In principle, Section 8 participants have many housing options, as they locate their own apartments and may use their vouchers in jurisdictions across the country. 42 U.S.C. § 1437f. In practice, however, voucher holders frequently encounter difficulty moving to more affluent neighborhoods, where landlords often refuse to rent to them. *See, e.g.*, Susan J. Popkin & Mary K. Cunningham, Urban Inst., *CHAC Section 8 Program: Barrier to Successful Leasing Up* 4-5 (1999); *Keeping the Promise: Preserving and Enhancing Housing Mobility in the Section 8 Housing Choice Research Program* (Philip Tegeler et al. eds., 2005). Even though discrimination against Section 8 recipients is illegal in many cities, in most states Section 8 discrimination is not regulated, and a study of Chicago Section 8 voucher holders' experiences found such discrimination "to be disturbingly common." *Id.* at 23.[5]

Zoning also impacts almost every American town and neighborhood. Unfortunately, many zoning restrictions, allowing local governments to "indirectly control who may live within their boundaries," go hand in hand with the exclusion of people of color.[6] Rolf Pendall, *Local Land Use Regulation and the Chain of Exclusion*, 66 J. Am. Planning Ass'n 125, 140 (2000). There is a "long-known connection between low-density-only zoning and racial exclusion," *id.* at

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[5] Other, smaller federal programs also have a tendency to perpetuate housing segregation by steering assisted housing to racially isolated areas. *See* Philip D. Tegeler, *The Persistence of Segregation in Government Housing Programs, in The Geography of Opportunity: Race and Housing Choice in Metropolitan America* 197, 197-216 (Xavier de Souza Briggs ed., 2005) (analyzing segregation tendencies built into federal LIHTC, HOME, CRA, HOPE VI, and Project Based Section 8 programs).

[6] Like other governmental practices influencing housing patterns, zoning has a racially exclusionary history. *See Buchanan*, 245 U.S. at 81-82 (striking down race-based Louisville zoning ordinance).

135, even though the Fair Housing Act has long prohibited zoning rules that have the effect of discriminating on the basis of race. *See* 42 U.S.C. § 3604(a); *Huntington Branch, NAACP v. Town of Huntington*, 844 F.2d 926 (2d Cir.), *aff'd per curiam*, 488 U.S. 15 (1988). Indeed, low-density zoning significantly limits the development of rental housing and therefore the number of Black and Latino residents who may move into municipalities and counties. Pendall, *supra*, at 126. Closely related to the delegation of exclusionary land use powers to local governments is the fragmentation of local control over assisted housing programs, which also has a tendency to promote segregation. *See* David Rusk, *Cities Without Suburbs* 3, 121 (1993); Peter D. Salins, *Metropolitan Areas: Cities, Suburbs, and the Ties That Bind, in Interwoven Destinies* (Henry Cisneros ed., 1993); Philip Tegeler, *Housing Segregation and Local Discretion*, 3 J.L. & Pol'y 209 (1994).

C. School integration is unlikely to occur naturally because of private discriminatory practices that continue to skew the housing market.

Aside from the continuing governmental actions that promote segregation, a multitude of private discriminatory practices continue to perpetuate residential segregation and, consequently, school segregation.

1. Steering and other forms of housing discrimination.

As has been well-documented by numerous HUD and private studies, African-Americans and Latinos frequently encounter discrimination when searching for housing at all stages: upon entering a realtor's office they receive inferior service; they are told fewer homes are available; and they are shown fewer homes than Whites are. John Yinger, *Closed Doors, Opportunities Lost* 19-49 (1995).

HUD's Housing Discrimination Study 2000 ("HDS 2000"), the most recent comprehensive study of housing discrimination in the United States, indicates that housing

discrimination remains a serious problem, with some illegal practices actually on the rise. *See* Margery Austin Turner et al., Urban Inst., *Discrimination in Metropolitan Housing Markets: National Results from Phase I HDS 2000* (2002).

The most universal discriminatory practice is rampant "steering" by real estate agents. This Court has defined "steering" as "directing prospective home buyers interested in equivalent properties to different areas according to their race." *Gladstone, Realtors v. Vill. of Bellwood*, 441 U.S. 91, 94 (1979). Of course, steering violates the Fair Housing Act. *See* 42 U.S.C. § 3604(a); *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 370 (1982); *Gladstone*, 441 U.S. at 115 n. 32; Schwemm, *supra*, at § 13:5. As a result of steering, minority homebuyers are directed to predominately minority neighborhoods, and White homebuyers are directed to predominately White neighborhoods, thus reinforcing segregation. Yinger, *supra*, at 51-61.

Remarkably, HDS 2000 indicates that steering remains a stubbornly persistent practice – evidenced in 12% to 15% of tests – that has increased since 1989. *See* Turner et al., *HDS 2000 Phase I, supra*, at 6-16.[7] Overall, "[w]hite homebuyers were significantly more likely than comparable blacks to be recommended and shown homes in more predominantly white neighborhoods." *See id.* at 3-11.

Some examples of steering by real estate agents gathered during HDS 2000 include the following statements:

- "[Area] has a questionable ethnic mix that you might not like. I could probably lose my license for saying this!"

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[7] Recent studies indicate that steering continues, and often with explicit reference to a neighborhood's schools. *See, e.g.*, Nat'l Fair Hous. Alliance, *Housing Segregation Background Report: Long Island, New York* (June 21, 2006); Nat'l Fair Hous. Alliance, *Housing Segregation Background Report: Westchester, New York* (Mar. 23, 2006) (finding that real estate agents disparaged a neighborhood and its schools to White testers, but showed and marketed homes in the same neighborhood to Latinos).

- "[Area] is different from here; it's multicultural . . . . I'm not allowed to steer you, but there are some areas that you wouldn't want to live in."
- "I would not send you to this area. I'm not supposed to say this but I'm probably old enough to be your father. [When tester asked why, agent said tentatively] Because it's primarily an ethnic neighborhood and I wouldn't send you there."

See George Galster & Erin Godfrey, *By Words and Deeds: Racial Steering by Real Estate Agents in the U.S. in 2000*, 71 J. Am. Plan. Ass'n 251, 262 (2005). Likely causes of steering include both real estate broker and White customer prejudice.[8] *See* Bo Zhao et al., *Why Do Real Estate Brokers Continue to Discriminate? Evidence from the 2000 Housing Discrimination Study*, 59 J. Urb. Econ. 394 (2006).

In addition, traditional forms of discrimination also play a role in the housing market. HDS 2000 indicated that in home sales markets, Whites consistently received favored treatment over Blacks 17% of the time, and over Latinos approximately 20% of the time. Turner et al., *HDS 2000 Phase I, supra*, at 4-7, 4-12. Non-racial explanations for differential treatment were considered and found to be unlikely. *Id.* at 5-1-5-16.

Indeed, housing discrimination appears to be so pervasive that people are reluctant to report it. A recent HUD-sponsored study found that over 80% of people who thought that they were the victims of housing discrimination did nothing about it. Martin D. Abravanel & Mary K. Cunningham, Urban Inst., *How Much Do We Know? Public*

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[8] Similar to steering, real estate agents respond differently to the expressed interests of White and minority homebuyers. For example, "agents typically accept the initial request as an accurate portrayal of a White's preferences but adjust the initial request made by a Black to conform to the real estate agents' preconceptions." Jan Ondich et al., *Now You See It, Now You Don't: Why Do Real Estate Agents Withhold Available Houses from Black Customers?*, 85 Rev. of Econ. & Stat. 854, 872 (2003).

Awareness of the Nation's Fair Housing Laws 25 (2002). "Almost two of every five people in this situation believed there was no point in responding, that it would not have solved the problem, or in some instances, that it could have made the problem worse." *Id.* at 27. Of the few who took action, about one-third simply complained to the perpetrator. *Id.* at 28. Unfortunately, these responses "suggest[] a much greater incidence of perceived housing discrimination among the general public than a tally of complaints to government agencies, fair housing groups, or the legal system would indicate." *Id.*

2. Mortgage lending and insurance discrimination.

Similarly, discrimination against people of color by mortgage lending institutions and insurance companies is also pervasive. Private lenders continue to deny mortgages to potential minority homebuyers at disproportionate rates. Stephen Ross & John Yinger, *The Color of Credit* 5-8 (2003). In addition, insurance companies often refuse to offer policies in minority neighborhoods. These practices effectively deny housing to many minority families.

A number of sources confirm that mortgage lending discrimination continues to be a significant problem. As some scholars have described:

> A hint about the potential power of mortgage discrimination is provided by the long-standing gaps in homeownership rates between black and white households and between Hispanic and white households. In 2001, the homeownership rate for non-Hispanic whites . . . was 26.6 percentage points higher than the homeownership rate for blacks . . . and 27.0 points higher than the homeownership rate for Hispanics . . . .

Id. at 2. Similarly, a recent HUD study that used paired testers posing as first-time homebuyers indicated that African-American and Latino homebuyers faced "a

significant risk of receiving less favorable treatment than comparable whites," when visiting mainstream mortgage lending institutions to make pre-application inquiries. Margery Austin Turner et al., Urban Inst., *All Other Things Being Equal: A Paired Testing Study of Mortgage Lending Institutions* iii (2002). Among the most serious forms of discrimination discerned by the study were differential estimates of home price and total loan amount. *Id.* at 37. Obviously, these differences determine which neighborhoods are available to potential homebuyers.

Moreover, some studies have indicated that large differences in mortgage rejection rates come about because "[l]oan officers [ar]e far more likely to overlook flaws in the credit scores of white applicants or to arrange creative financing for them than they [ar]e in the case of black applicants." Melvin L. Oliver & Thomas M. Shapiro, *Black Wealth/White Wealth* 139 (1995). In addition, the types of mortgages made available to potential homebuyers vary by race, with minorities more likely to receive higher cost loans than Whites.[9] Overall, minority neighborhoods receive a high percentage of subprime refinance loans as compared to White neighborhoods. *See id.*; William Apgar & Allegra Calder, *The Dual Mortgage Market: The Persistence of Discrimination in Mortgage Lending, in The Geography of Opportunity, supra,* at 101, 101-23.

All of these factors together likely contribute to the disproportionate declinations of mortgage applications submitted by minorities in both Seattle and Louisville. In Seattle, 21% of completed mortgage applications submitted by African-Americans, and 19% submitted by Latinos (of all

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[9] Robert B. Avery et al., *Higher-Priced Home Lending and the 2005 HMDA Data*, Fed. Res. Bull. A123, A156 (2006) (noting higher-priced lending is most common in census tracts with, among other characteristics, high percentages of minorities); *id.* at A159 (noting White-African-American gap of ten percentage points for conventional home-purchase loans and 6.2 percentage points for refinancings after controlling for other variables).

races), are denied, as compared to only 11% for Whites. *See* Fed. Fin. Insts. Examination Council, *Home Mortgage Disclosure Act: Central Depository Database, available at* http://www.ffiec.gov/CentralDepository/default.aspx.[10] Completed mortgage applications in Louisville are approved with a similar gap, as the denial rates are 26% for African-Americans, and 21% for Latinos (of all races), but only 15% for Whites. *See id.*[11]

The problem of limited access to mortgages for minorities is compounded by limited access to insurance, which is critical to the home purchasing process: "No insurance, no loan; no loan, no house; lack of insurance thus makes housing unavailable." *NAACP v. Am. Family Mut. Ins. Co.*, 978 F.2d 287, 297 (7th Cir. 1992). Unfortunately, this is yet another area of the housing market plagued by racial discrimination. *See* Gregory D. Squires, *Racial Profiling, Insurance Style: Insurance Redlining and the Uneven Development of Metropolitan Areas*, 25 J. Urb. Aff. 391 (2003). Some studies indicate that minority neighborhoods are excluded from the best insurance coverage. *See* Shanna L. Smith & Cathy Cloud, *Documenting Discrimination by Homeowners Insurance Companies Through Testing, in Insurance Redlining* 97, 97-117 (Gregory D. Squires ed., 1997).

There is no doubt that these practices and policies continue to skew the housing market, making the achievement of meaningful residential integration extraordinarily difficult. Accordingly, as long as housing is not fair to all Americans and residential integration stymied,

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[10] Aggregate Table 4-2: Disposition of Applications for Conventional Home-Purchase Loans, 1 to 4 Family and Manufactured Home Dwellings, By Race, Ethnicity, Gender and Income of Applicant, 2004. MSA/MD: 42644 - Seattle-Bellevue-Everett, WA.

[11] Aggregate Table 4-2: Disposition of Applications for Conventional Home-Purchase Loans, 1 to 4 Family and Manufactured Home Dwellings, By Race, Ethnicity, Gender and Income of Applicant, 2004. MSA/MD: 31140 - Louisville, KY-IN.

there can be no reasonable expectation that school integration will naturally follow.

D. Americans are increasingly willing to live in integrated communities.

Despite the glacial progress toward residential integration, social science research indicates that over the last 25 years, American preferences regarding neighborhood racial composition have shifted positively toward increased tolerance for sharing neighborhoods with other racial groups. Camille Zubrinsky Charles, *Can We Live Together? Racial Preferences and Neighborhood Outcomes, in The Geography of Opportunity, supra,* at 45, 61-63. In particular, Whites exhibit a willingness to live among more than a token number of Blacks and members of other minority groups, and Blacks want to live in communities with non-trivial numbers of both Black and non-Black populations. Camille Zubrinsky Charles, *The Dynamics of Racial Residential Segregation,* 29 Ann. Rev. Soc. 167, 182-85 (2003). These evolving preferences are evidenced by the fact that the number of exclusively White neighborhoods dropped significantly during the 1990s. Ingrid Gould Ellen, *Sharing America's Neighborhoods: The Prospects for Stable Racial Integration* 21-23 (2000).

The prospects for integration are not, therefore, a simple matter of whether people of different races have compatible preferences. Preferences evolve and change over time, especially when informed by experience, making meaningful residential integration both a valuable and achievable goal. *See* Gary Orfield, *Metropolitan School Desegregation: Impacts on Metropolitan Society, in In Pursuit of a Dream Deferred, supra,* at 121, 136. Moreover, social science research evidences diverse and changing attitudes about integration around the United States. In *Freeman v. Pitts,* 503 U.S. 467 (1992), this Court cited evidence presented to the District Court "that racially stable neighborhoods are not likely to emerge because whites prefer a racial mix of 80% white and 20% black, while blacks prefer a 50-50 mix." *Id.* at 495. The study

relied upon was, however, limited to a 1976 study about racial residential preferences in the Detroit area. *See* Reynolds Farley et al., *The Residential Preferences of Blacks and Whites: A Four-Metropolis Analysis*, 8 Hous. Pol'y Debate 763, 771 (1997). In a multi-city study following *Freeman*, the lead author of the 1976 study and his co-authors concluded – contrary to the Court's analysis – that "it is not appropriate to generalize to the entire United States from the 1976 and 1992 Detroit Area Studies." *Id.* at 793. In addition, they concluded that the overlapping racial residential preferences of Whites and Blacks indicate that preferences change over time, and that increasing residential integration is possible. *Id.* at 794-96.

Rather than a utopian dream, meaningful residential integration is an attainable and desirable goal, as Americans of all backgrounds have expressed a greater willingness to share their neighborhoods with people of different races. But current public policies and private actions continue to make this goal elusive.

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"As long as the traditional, geographic idea of neighborhood schools continues to hold sway, neighborhood segregation will naturally determine school segregation." Nancy A. Denton, *The Persistence of Segregation: Links Between Residential Segregation and School Segregation, in In Pursuit of a Dream Deferred, supra*, at 89, 89. As *Keyes* made clear, school districts cannot make decisions about student assignment policies without considering residential patterns. To do so would run contrary to national policy promoting fair housing and integration, and fail to account for the myriad forces – public and private, historical and contemporary – that have created America's deep residential racial divisions. Local school districts have a compelling interest in addressing a problem much larger than one inside classrooms when they adopt programs promoting integration.

II. THE POSITIVE IMPACT OF SCHOOL INTEGRATION POLICIES ON RESIDENTIAL INTEGRATION UNDERSCORES THE DISTRICTS' COMPELLING INTEREST IN COMBATING SCHOOL SEGREGATION.

A meaningfully integrated democratic society is a result of *both* integrated neighborhoods and integrated schools. Thus, one concrete way to promote the goal of fair and integrated housing is through the implementation of narrowly tailored school integration programs. Social science research indicates that, in both the short and long term, such school integration programs powerfully promote residential integration.

As this Court recognized in *Brown*, the harms of racially identifiable schools are significant and deserving of remediation, in no small part because the "[s]egregation of white and colored children in public schools has a detrimental effect upon the colored children." 347 U.S. at 494. More recently, this Court recognized that "the educational benefits that diversity is designed to produce . . . are substantial," *Grutter v. Bollinger*, 539 U.S. 306, 330 (2003), not just for minority students but for all students. Since *Brown*, both Congress and this Court have also identified the extraordinary societal benefits of housing integration, condemned the ills of residential segregation, and recognized the link between school desegregation and housing integration.

The compelling nature of a school district's interest is underscored by the positive impact of school desegregation programs on residential integration. *See* Diana Pearce, Ctr. for Nat'l Pol'y Rev., *Breaking Down Barriers: New Evidence on the Impact of Metropolitan School Desegregation on Housing Patterns* 3 (1980) (citing evidence of increased housing integration in places with metropolitan desegregation programs). During the 1970s, cities that had undergone metropolitan school desegregation experienced "markedly greater rates" of housing integration than did other cities.

Pearce, *supra*, at 26-27. Between 1970 and 1990, residential integration occurred at twice the national average in communities with metropolitan school desegregation programs. Erica Frankenberg, *The Impact of School Segregation on Residential Housing Patterns: Mobile, Alabama, and Charlotte, North Carolina, in School Resegregation: Must the South Turn Back?* 164, 180 (John Charles Boger & Gary Orfield eds., 2005). A recent study of 15 metropolitan regions explains that comprehensive school desegregation programs are strongly correlated with *stable* residential integration. Inst. on Race & Poverty, *Minority Suburbanization, Stable Integration, and Economic Opportunity in Fifteen Metropolitan Regions* (2006); *see also* Pearce, *supra*, at 51-52 (finding school desegregation supports stable, integrated communities). Concomitant with the extensive segregation revealed by the 2000 Census, described above, "[m]any neighborhoods that are integrated at a given time actually are in transition to a less diverse status."[12] Inst. on Race & Poverty, *supra*, at 22; *see also* Orfield, *Metropolitan School Desegregation*, *supra*, at 136-37. Therefore, "encouraging findings about the potential for metro-wide school integration to stabilize neighborhoods while increasing equal access to educational opportunity" are particularly important. Inst. on Race & Poverty, *supra*, at 27.

Integrated schools promote stable integrated neighborhoods. As this Court recognized, "The location of schools may thus influence the patterns of residential development of a metropolitan area and have important impact on composition of inner-city neighborhoods." *Swann*, 402 U.S. at 20-21. Parents frequently choose their homes based at least partly on the schools that their children will attend, and they see segregated schools as powerful signals that may discourage them from buying homes in certain

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[12] This conclusion is reflected in the Institute on Race and Poverty's finding that White-Black integrated communities with a Black population share of 29% or greater in 1980 were likely to resegregate over the next 20 years. *See* Inst. on Race & Poverty, *supra*, at 27, 28 fig. 7.

neighborhoods. Frankenberg, *supra*, at 179; Pearce, *supra*, at 4. Where racially identifiable schools exist, White parents who can afford to do so frequently move to White districts on the belief that the schools in those neighborhoods will be better. Frankenberg, *supra*, at 179; Pearce, *supra*, at 9-10. By influencing where people with means choose to live, segregated schools perpetuate and exacerbate residential segregation.

Meaningful school integration eliminates the incentive to move to White enclaves because children attend integrated schools no matter where in the district they live. Frankenberg, *supra*, at 180; Pearce, *supra*, at 41. Fully integrated schools open all areas of a community to parents, who may live anywhere in the district and know that their children will not become racially isolated in their schools. Frankenberg, *supra*, at 180; Pearce, *supra*, at 4, 40-41. "[W]hite households are less likely to flee racially mixed environments if they are confident that their children will continue to attend integrated schools even if the racial mix of the neighborhood changes." Inst. on Race & Poverty, *supra*, at 27; Pearce, *supra*, at 4, 41. Greater residential integration, in turn, produces school integration organically, as the diversity of the neighborhoods from which schools draw their pupils increases. *See* Pearce, *supra*, at 32, 35 (finding, generally, much larger and lasting reductions in residential segregation in cities that had experienced metropolitan school desegregation). For that cycle to perpetuate, full integration is necessary; the presence of any racially identifiable schools as a result of only partial integration revives parents' fear that their children might become racially isolated in their schools and contributes to residential resegregation as those with the means again seek to move to White enclaves. Frankenberg, *supra*, at 181; Pearce, *supra*, at 40-41.

Real estate agents even market homes differently based on whether schools in the district are racially identifiable. To provide legal signals about the racial composition of

neighborhoods, advertisements for homes in districts with segregated schools list the names of schools, if they are predominantly White, from two to ten times more frequently than do advertisements for homes in districts with integrated schools. Orfield, *Metropolitan School Desegregation, supra*, at 135; Pearce, *supra*, at 9, 14-18. In districts with truly integrated schools, home advertisements mention schools much less often and focus instead on things like distance to offices, stores, and recreational facilities. Orfield, *Metropolitan School Desegregation, supra*, at 135; Pearce, *supra*, at 12, 14. By including White school names in advertisements, real estate agents reinforce the notion that the ability to attend segregated schools is an important – and desirable – feature of a property.[13] Pearce, *supra*, at 18.

In addition, among the long-term benefits of school policies promoting integration is the greater likelihood that students who have attended integrated schools will live in integrated neighborhoods later in life. The Seattle School District explicitly recognized the benefits of residential integration when it adopted its "racial tiebreak" for oversubscribed high schools. Along with improved critical thinking skills among both White and minority students, and "the socialization and citizenship advantages of racially diverse schools," the Seattle School District identified as a compelling interest the following conclusion reached by its expert: "that '*research . . . strongly shows that graduates of desegregated high schools are more likely to live in integrated communities than those who do not, and are more likely to have cross-race friendships later in life.*'" *Parents Involved in Cmty. Sch.*, 426 F.3d at 1175 (emphasis added); *see also* Amy Stuart Wells & Robert L. Crain, *Perpetuation Theory and the Long-Term Effects of School Desegregation*, 64 Rev. Educ. Res. 531,

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[13] Recent testing studies actually indicate that real estate agents describe schools as "good" or "bad" as a proxy for the racial or ethnic composition of neighborhoods. *See* Nat'l Fair Hous. Alliance, *Unequal Opportunity – Perpetuating Housing Segregation in America: 2006 Fair Housing Trends Report* (Apr. 5, 2006).

551-52 (1994) (reviewing studies finding students in integrated schools more likely to have lasting cross-racial relationships and concluding "interracial contact in elementary or secondary school can help blacks overcome perpetual segregation").

These findings affirm the significant value of school desegregation efforts. Aside from their obvious impact on a single school's racial composition, school desegregation programs also make powerful contributions to residential integration in both the short and long term, which is a worthy goal, in accordance with local and national policy.

CONCLUSION

The integral connection between housing and school integration makes consideration of residential segregation critical to any analysis of school integration programs. America's distorted housing markets are the legacy of state-sponsored discrimination, and are bolstered by government programs and private discrimination. Natural school integration is, therefore, often unavailable, and programs like the Districts' are critically important for achieving school integration. The ability of integrated schools to support residential integration further underscores the compelling nature of the Districts' interest in such programs.

For the foregoing reasons, *amici* urge this Court to affirm the Courts of Appeals.

Respectfully submitted,

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APPENDIX

APPENDIX

List of *amici*:

Organizations

Poverty & Race Research Action Council, Washington, DC

Institute on Race & Poverty, Minneapolis, MN

National Fair Housing Alliance, Washington, DC

National Low Income Housing Coalition, Washington, DC

National Housing Law Project, Oakland, CA

Gamaliel Foundation, Chicago, IL

Center for Cities and Schools, Berkeley, CA

Inclusive Communities Project, Dallas, TX

Kentucky Commission on Human Rights, Louisville, KY

Metropolitan Housing Coalition, Louisville, KY

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Henry W. McGee, Jr., Professor of Law and Director, Latinoamerica--E.E.U.U. Programa de Intercambio para Academicos y Oficiales Judiciales, Seattle University; Professor of Law Emeritus, University of California, Los Angeles

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John M. Payne, Board of Governors Distinguished Service Professor, Professor of Law and Justice, and Frederick W. Hall Scholar, Rutgers School of Law - Newark

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Florence Wagman Roisman, William F. Harvey Professor of Law, Indiana University School of Law - Indianapolis

James Rosenbaum, Professor of Sociology, Education and Social Policy, and Faculty Fellow, Institute for Policy Research, Northwestern University

Stephen L. Ross, Associate Professor, Department of Economics, University of Connecticut

Leonard Rubinowitz, Professor of Law, Northwestern Law School

Peter W. Salsich, McDonnell Professor of Justice, Saint Louis University School of Law

Robert G. Schwemm, Ashland Professor, College of Law, University of Kentucky

Joseph William Singer, Bussey Professor of Law, Harvard Law School

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